IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5502 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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GANPATBHAI KHANABHAI PARMAR

Versus

ARJUNBHAI KARSANBHAI VAGADA

Appearance:

1. Special Civil Application No. 5502 of 1986

MR SV PARMAR for Petitioner No. 1-2

MR KG VAKHARIA for Respondent No. 1

GOVERNMENT PLEADER for Respondent No. 2

MR MI HAVA for Respondent No. 3

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 31/07/2002

ORAL JUDGEMENT

The short facts of the case are that the petitioner No.1 is the Chairman of the petitioner No.2

and the petitioner No.2 is the Coop. Housing Society. It is the case of the petitioner that the respondent No.1 when became the member of the petitioner No.2 society has submitted a declaration (of course the date of declaration is blank) that the members of his family were not having house in another Housing Society. On 15.3.84 the District Registrar issued notice to the respondent No.1 under section 147(1) of Gujarat Cooperative Societies Act (hereinafter referred to as "the Act") stating that the Chairman of the petitioner No.2 society in his application dated 2.3.84 communicated that the respondent No.1 had filed a wrong declaration and therefore it is an offence under section 146(1) of the Act and therefore the respondent No.1 was called upon to show cause as to why the complaint should not be lodged against him for the said offence and for such purpose the opportunity was given to him under section 149(3) of the Act. On 16.4.84 the District Registrar intimated the Chairman of the petitioner No.2 society to remain present on 4.5.84 for the purpose of hearing. It appears that thereafter on 17.8.84, once again, the District Registrar addressed a letter to the Chairman of the petitioner No.2 society copy whereof is forwarded to respondent No.1 herein intimating that the signature on the said declaration is denied and therefore the original declaration may be produced before him on 29.8.84. Thereafter, on 23.9.85 an order has been passed by the District Registrar under section 23(2) of the Act whereby the respondent No.1 is removed as the member of the petitioner No.2 society on the ground of false declaration.

2. The respondent No.1 herein preferred revision before the Additional Registrar, Cooperative Societies, Gujarat State being Revision Application No.25/85 against the order dated 23.9.85 passed by the District Registrar under section 23(2) of the Act. In the said revision the Additional Registrar, Cooperative Societies found that the proceedings were initiated under section 147 of the Act and therefore the final order could not have been passed under section 23(2) of the Act by the District Registrar and he further found that as per the record of the society the respondent No.1 is already removed as the member by Resolution under section 36 of the Act in the year 1975 and therefore the proceedings under section 23 of the Act, in any case, can not be maintained because when a person is expelled as member there is no question of expelling him as a member by the District Registrar and therefore ultimately the revision is allowed and the order of the District Registrar is set aside. It is this order dated 25.7.86 passed by the Additional Registrar in

revision which is under challenge in this petition

3. Mr.S.V.Parmar appearing on behalf of the petitioner has mainly raised two contentions that in fact and rather in substance the proceedings were initiated as per the provisions of section 23 of the Act since it was the case of the society that a false declaration is filed. Therefore, merely because in the show cause notice there is a mention of section 147 of the Act, in his submission, final order under section 23 of the Act would not be defeated. Mr.Parmar raised second contention that merely because the resolution passed under section 36 of the Act for expulsion or approval is granted by the District Registrar for such expulsion, the same would not foreclose the proceedings under section 23 of the Act, because it may be that the proceedings under section 36 of the Act may or may not be maintained and even if it is maintained subsequently a person can still be admitted as a member of the society. Therefore, he submitted that the basis of the proceedings under section 36 considered by the Additional Registrar is an irrelevant and extraneous consideration. Mr.Parmar lastly submitted that even if this court finds that when the first notice was issued there was no proper mentioning of section and if the order of the Additional Registrar is maintained liberty may be reserved to the District Registrar to take appropriate action under section 23 of the Act for filing false declaration by the respondent No.1.

4. On behalf of the respondent No.1, Mr.Ketan Shah with Mr.Tushar Mehta has supported the order of the Additional Registrar and on behalf of respondent No.2 & 3 Ld.AGP Ms.Devani submitted that the show cause notice issued by the District Registrar is clear and it can not be said that there is mistake committed in mentioning of section. She has also supported the order passed by the Additional Registrar in revision.

5. Considering the above, so far as the first contention of Mr.Parmar is concerned, the perusal of the show cause notice makes it abundantly clear that the intention of the District Registrar was to call upon the respondent No.1 to show as to why the complaint for the offence under section 147 should not be lodged. The only source of power for filing the complaint and giving opportunity before lodging the complaint is under section 147 read with section 149 of the Act. It may be for the purpose of primafacie finding as to whether the declaration is false or not the District Registrar may be

required to see the original declaration or he might have heard the society or the respondent No.1, but the same would not convert the proceedings under section 147 read with section 149 into the proceedings under section 23 of the Act. Therefore, there is no substance in the contention raised by Mr.Parmar that in substance the proceedings were under section 23 of the Act and not under section 147 of the Act. Even if the order under section 23 of the Act passed by the District Registrar is read with the order dated 25.7.86 of the Additional Registrar, there is nothing on record to show that on what date the declaration was filed and whether the wife of the respondent No.1 was holding the plot prior to the said declaration or subsequent to the said declaration. On the contrary, the contention appears to be that the respondent No.1 and his wife became members of the petitioner No.2 in the year 1969 whereas the documentary evidence on the basis of which the society complained that the wife has become member of Majoorgam Coop.Housing Society is of 1974-75 i.e. of later date. In that view of the same and for the reasons stated hereinafter, this court can not accept the alternative submission of Mr.Parmar that the liberty may be given to the society to take appropriate proceedings for filing false declaration.

6. So far as the second contention of Mr.Parmar on the question of proceedings under section 36 of the Act is concerned, I am of the view that if the person is expelled as the member by the society and may be that the proceedings under section 36 of the Act is the subject matter of litigation and once when the person is expelled as the member of the society only there can not be any question of removal under section 23 of the Act. Mr.Parmar is not right in his submission that the proceedings under section 36 of the Act would not foreclose the proceedings under section 23 of the Act for all times to come. He submitted that after a person is expelled, the society can still admit the said person as the member, however, such an analogy would not be applicable to the present case because admittedly after the petitioner is expelled under section 36 of the Act, it is not the case of the society that he has been subsequently admitted as a member. If as per the contention of the society the person is expelled as a member, the question of removal, may be under section 23 of the Act, would not arise.

7. I am of the view that the Additional Registrar while passing order in revision has rightly taken into

consideration both the aspects, namely, that the proceedings were initiated under section 147 of the Act and final order is passed under section 23(2) of the Act and that when a person is expelled as a member there is no question of removal under section 23 of the Act. Even otherwise also, this court while exercising the power under Article 226/227 of the Constitution would not interfere with the order passed by the lower authorities when even two views are possible but in the present case, as indicated earlier, the only view which can be gathered is that the proceedings under section 23(2), rather order passed under section 23(2) of the Act by the District Registrar is illegal and therefore the revision was rightly allowed by the Additional Registrar.

8. In view of the above, when the proceedings for expulsion under section 36 of the Act are taken by the society, even while considering the second aspect also this court is not inclined to accept the alternative contention for reserving the liberty to the society to undertake the proceedings under section 23 of the Act. However, it is made clear that if the law permits for initiating proceedings under section 23 of the Act against the respondent No.1, this court is not curtailing such remedy, but on the facts and circumstances presented before this court, in the present case, it can be said that there is no primafacie case for initiating the proceedings under section 23 of the Act and the order passed by the District Registrar can not be maintained. The primafacie observations are made on account of aforesaid altrnative contention of leaving express liberty was raised.

9. In the result, I do not find any merit in any of the contentions raised on behalf of the petitioner and hence this petition is dismissed. Rule is discharged. There shall be no order as to costs.

31.7.02 (JAYANT PATEL,J)